

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

D.J.; TONI CORDOVA, *et al.*

Plaintiffs,

v.

**UNIVERSITY OF IOWA HOSPITALS
AND CLINICS, *et al.*,**

Defendants.

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Civil Action No. 2:22-cv-00752-CB

Judge Cathy Bissoon

DEFENDANTS’ MOTION TO DISMISS PLAINTIFFS’ COMPLAINT

NOW COMES Defendants University of Iowa Hospitals and Clinics, Dr. Ademola Abiose, Duke University Health System, Inc., Columbia University Medical Center, Dr. Maryam Banikazemi, Dr. Manesh Patel, Children’s Memorial Hospital (n/k/a Ann & Robert H. Lurie Children’s Hospital of Chicago), Dr. Joel Charrow, Baylor College of Medicine, Dr. Christine Eng, Cincinnati Children’s Hospital, Dr. Robert Hopkin, University of Minnesota, Dr. Michael Mauer, University of Washington Medicine, Dr. Ronald Scott, Massachusetts General Hospital, Dr. Katherine Sims, University of Alabama at Birmingham Medicine, Dr. David Warnock, Cedars-Sinai Medical Center, and Dr. William Wilcox (“Moving Defendants”), by and through their undersigned counsel, and hereby moves to dismiss Plaintiffs’ Complaint, stating as follows:

1. This is a putative class action brought by Plaintiffs or their decedents, who allegedly sustained harm in connection with a shortage of a drug called Fabrazyme that began in 2009 and lasted until 2012.

2. This case is brought against twenty-four Defendants, all out-of-state medical centers (“Medical Center Defendants”) or out-of-state current or former physicians (“Physician Defendants”) of the Medical Center Defendants. Two defendants are alleged to be in France.

Compl. ¶¶ 39-40. These two defendants do not appear to have been served and have not yet appeared in this action.

3. There are multiple named Plaintiffs in this case. Compl. ¶¶ 1-16. Two named Plaintiffs allege they reside in Pennsylvania. Compl. ¶¶ 4, 9.

4. None of the Defendants are incorporated in, have their principal place of business in, or reside in Pennsylvania. Compl. ¶¶ 17-40.

5. Plaintiffs allege there were two informational letters generated from meetings convened by Genzyme that were sent to “all Fabry patients in the U.S. including all of the named Plaintiffs.” Compl. ¶¶ 83, 86, Exs. A, B. The Moving Defendants are identified as members of a Fabrazyme Working Group (“FSWG”) in those letters along with multiple individuals from Genzyme, but are not alleged to have drafted or sent the letters themselves.

6. On May 21, 2022, Plaintiffs filed a seven-count Class Action Complaint against Defendants including: (1) tort of failure to obtain informed consent; (2) breach of fiduciary duty; (3) violation of 42 U.S.C. § 1981 “Equal Protection under the Law”; (4) violation of 42 U.S.C. § 1983 “Protection of Rights from Those Acting Under Color of Law”; (5) violation of 42 U.S.C. § 1985(3) “Conspiracy to Deprive Rights from Citizens”; (6) violation of 42 U.S.C. § 1986 “Negligent Deprivation of Rights of Citizens”; and (7) violation of “Virginia Wrongful Death (Code of Virginia § 8.01-50) or in the alternative Survival Action Claims (Code of Virginia § 8.01-25).” Compl. ¶¶ 201-310.

7. Through this Motion to Dismiss, Moving Defendants (consisting of all Defendants except the two French Defendants) seek to dismiss all causes of action for lack of

personal jurisdiction. Additionally, Public Entity Defendants¹ seek to dismiss all causes of action against them as barred by 11th Amendment Immunity.

8. The basis for this Motion is set forth at length in Moving Defendants Memorandum in Support of their Motion to Dismiss Plaintiffs' Complaint for Lack of Personal Jurisdiction and Public Entity Defendants' Memorandum in Support of their Motion to Dismiss Plaintiffs' Complaint for Lack of Subject Matter Jurisdiction, which is being filed contemporaneously.

[signatures on following page]

¹ University of Iowa Hospitals and Clinics, Dr. Ademola Abiose, University of Minnesota, Dr. Michael Mauer, University of Washington Medicine, Dr. Ronald Scott, University of Alabama at Birmingham Medicine, and Dr. David Warnock.

Dated: November 8, 2022

Respectfully submitted:

/s/ Thomas Cocchi

Thomas Cocchi
PA ID No. 322604
HUSCH BLACKWELL LLP
1801 Pennsylvania Avenue NW
Washington, DC 20006
Tel: 202-378-2412
Thomas.cocchi@huschblackwell.com

Michael T. Raupp (*Pro Hac Vice*
Forthcoming)

MO Bar No. 65121
HUSCH BLACKWELL LLP
4801 Main Street, Suite 1000
Kansas City, MO 64112
Tel: 816-983-8324
Michael.raupp@huschblackwell.com

*Counsel for Defendants University of
Minnesota; Michael Mauer; University of
Iowa Hospitals and Clinics, an Iowa Entity;
and Ademola Abiose*

/s/ Cole R. Gresham

Jay M. Ezelle (admitted *pro hac vice*)
Cole R. Gresham (admitted *pro hac vice*)
STARNES DAVIS FLORIE LLP
100 Brookwood Place, Seventh Floor
Birmingham, Alabama 35259-8512
(205) 868-6000 - Phone
(205) 868-6099 - Facsimile
jezelle@starneslaw.com
cgresham@starneslaw.com

Sandra L. Alven
Riley, Hewitt, Witte & Romano, P.C.
650 Washington Road
Suite 300
Pittsburgh, PA 15288
(412) 341-9300 – Phone
salven@rhwrlaw.com

/s/ Bruce W. Megard

Bruce W. Megard (admitted *pro hac vice*)
David M. Norman (admitted *pro hac vice*)
BENNETT BIGELOW & LEEDOM, P.S
601 Union Street, Suite 1500
Seattle, Washington 98101-1363
Telephone: (206) 622-5511
Email: bmegard@bblaw.com
Email: dnorman@bblaw.com

*Special Assistant Attorney General for
Defendants University of Washington
Medicine and C. Ronald Scott, MD*

/s/ Tory A. Weigand

Tory A. Weigand (admitted *pro hac vice*)
Morrison Mahoney LLP
250 Summer Street
Boston, MA 02210
617-737-8827
Email: tweigand@morrisonmahoney.com

John M. Clark, Esquire
301 E. Germantown Pike, 3rd Floor
East Norriton, PA 19401
Phone: (610) 756-2016
Fax: (856) 494-1844
Email: jclark@clarkfoxlaw.com

*Attorney for Defendants
Massachusetts General Hospital and
Katherine Sims*

*Counsel for Defendants University of
Alabama at Birmingham Medicine and Dr.
David Warnock*

/s/ Joseph Comer

Joseph Comer (admitted *pro hac vice*)
Andrea Kott (admitted *pro hac vice*)
Barker, Castro & Steinback LLC
303 W. Madison St.
Ste 700
Chicago, IL 60606
Telephone: 312-855-9300
Email: jcomer@bclawllc.com
Email: akott@bclawllc.com

*Counsel for Defendants Children's Memorial
Hospital (n/k/a/ Ann & Robert H. Lurie
Children's Hospital of Chicago) and Dr. Joel
Charrow*

/s/ Jacob C. Lehman

Jacob C. Lehman, Esquire
PA306808
German Gallagher & Murtagh, P.C.
The Bellevue, Fifth Floor 200
S. Broad Street
Philadelphia, PA 19102
Phone: 215-875-4011
Email: lehmanj@ggmfirm.com

*Counsel for Defendants Baylor College of
Medicine and Christine Eng*

/s/ Abigail A. Golden

Abigail A. Golden (admitted *pro hac vice*)
McGuireWoods LLP
201 N. Tryon Street, Suite 3000
Charlotte, North Carolina 28202
Telephone: 704.373.8963
agolden@mcguirewoods.com

/s/ Ashley N. Rodgers

Ashley N. Rodgers
PA I.D.: 314017
Lewis Brisbois Bisgaard & Smith
One PPG Place, 28th Floor
Pittsburgh, PA 15222
Telephone: 412-567-5596
Email: ashley.rodgers@lewisbrisbois.com

Jon Peter Kardassakis (admitted *pro hac vice*)
Michael Grimaldi (admitted *pro hac vice*)
Lewis Brisbois Bisgaard & Smith LLP
633 W. 5th Street
Suite 4000
Los Angeles, CA 90071
Telephone: 213-250-1800
Email: jon.kardassakis@lewisbrisbois.com
Email: michael.grimaldi@lewisbrisbois.com

*Counsel for Defendants Cedars-Sinai Medical
Center and Dr. William Wilcox*

/s/ Beth A. Bryan

Beth A. Bryan (admitted *pro hac vice*)
William E. Braff (admitted *pro hac vice*)
TAFT STETTINIUS & HOLLISTER LLP
425 Walnut Street, Suite 1800
Cincinnati, Ohio 45202
Phone: (513) 381-2838
Email: bryan@taftlaw.com
Email: bbraff@taftlaw.com

*Counsel for Defendants Cincinnati
Children's Hospital and Dr. Robert Hopkin*

Mark E. Anderson (admitted *pro hac vice*)
McGuireWoods LLP
501 Fayetteville Street
Suite 500
Raleigh, North Carolina 27601
Telephone: 919.755.6600
manderson@mcguirewoods.com

Samuel L. Tarry, Jr.
McGuireWoods LLP
1750 Tysons Boulevard
Suite 1800
Tysons, Virginia 22102
Telephone: 703.712.5000
starry@mcguirewoods.com

Natalie L. Zagari
Pa. ID No. 316221
McGuireWoods LLP
Tower Two-Sixty
260 Forbes Avenue
Suite 1800
Pittsburgh, PA 15222-3142
Telephone: 412.667.7986
nzagari@mcguirewoods.com

*Counsel for Defendants Duke University
Health System, Inc., Dr. Manesh Patel
And co-counsel for the Trustees of Columbia
University in the City of New York s/h/a
Columbia University Medical Center and
Maryam Banikazemi, M.D.*

Peter J. Fazio (*Pro Hac* Pending)
Aaronson Rappaport Feinstein & Deutsch,
LLP
600 Third Avenue
New York, New York 1006
Phone: 212.593.5458
pjfazio@arfdlaw.com

*Co-counsel for the Trustees of Columbia
University in the City of New York s/h/a
Columbia University Medical Center and
Maryam Banikazemi, M.D.*